

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Application of	)	
	)	
MARITIME COMMUNICATIONS/	)	FCC File No. 0002303355
LAND MOBILE LLC	)	
	)	
Application for New Automated Maritime	)	
Telecommunications System Stations	)	
	)	
Request for Waiver of Section 1.2110(c)(5)(A) of	)	
the Commission's Rules	)	
	)	
Petition to Deny filed by Warren C. Havens,	)	
Intelligent Transportation & Monitoring Wireless	)	
LLC, AMTS Consortium LLC, Telesaurus-VPC	)	
LLC, and Telesaurus Holdings GB LLC	)	

**ORDER ON RECONSIDERATION**

**Adopted: March 8, 2007**

**Released: March 9, 2007**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us three Petitions for Reconsideration (Petitions) filed by Warren C. Havens (Havens) and entities controlled by Havens, including Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC (ACL), Telesaurus-VPC, LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation (collectively with Havens, Petitioners), seeking reconsideration of Orders pertaining to the captioned application filed by Maritime Communications/Land Mobile, LLC (MC/LM) for new Automated Maritime Telecommunications System (AMTS) licenses for which it was the winning bidder in FCC Auction No. 61.<sup>1</sup> The first Petition for Reconsideration (First Petition)<sup>2</sup> seeks reconsideration of an August 2006 Order by the Public Safety and Critical Infrastructure Division (PSCID),<sup>3</sup> Wireless Telecommunications Bureau, denying the

<sup>1</sup> FCC File No. 0002303355 (filed Sept. 7, 2005, amended Aug. 21, 2006) (Application).

<sup>2</sup> Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC, Petition for Reconsideration (filed Sept. 6, 2006) (First Petition). Also before us are an Opposition to Petition for Reconsideration filed by MC/LM on September 18, 2006 (First Opposition), and a Reply to Opposition to Petition for Reconsideration and Related Motions filed by the Petitioners on October 2, 2006 (First Reply). We note that the Petitioners filed several versions of the First Petition, but with roughly the same pagination and without including any additional information of decisional significance. Our citations are to the version styled "Revised copy with Errata." While MC/LM contends this version was filed late, *see* Opposition at 3, we do not believe MC/LM is prejudiced by acceptance of the "Revised copy with Errata" in any event, given the totality of circumstances, including the generally minor nature of the changes from the earlier versions of the First Petition.

<sup>3</sup> Pursuant to a reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

Petitioners' Petition to Deny (PTD) the Application (*First Order*).<sup>4</sup> We also have before us a Petition for Reconsideration filed by ACL alone (ACL Petition),<sup>5</sup> and a Petition for Reconsideration filed by the other Petitioners (Second Petition),<sup>6</sup> both seeking reconsideration of a November 2006 Order (*Second Order*) by the Mobility Division (Division), Wireless Telecommunications Bureau.<sup>7</sup> The *Second Order* denied a request by MC/LM for a waiver of Section 1.2110(c)(5)(iii)(A) of the Commission's Rules, the "spousal attribution" rule pertaining to auction participants' eligibility for designated entity status,<sup>8</sup> and concluded that MC/LM was entitled to only a 25% bidding credit as a small business in Auction No. 61, rather than the 35% bidding credit as a very small business that it sought. For reasons discussed below, we deny the Petitions.

2. *Background.* In the *First Order*, the PSCID addressed the Petitioners' arguments that the Application should be denied because of alleged wrongdoing on the part of MC/LM. The PSCID considered and rejected the Petitioners' claims that MC/LM had failed to disclose agreements and arrangements with other parties with whom it had colluded for anticompetitive purposes;<sup>9</sup> had colluded with PSI in Auction No. 61;<sup>10</sup> had engaged in tortious interference to a contractual relationship between ACL and a third party;<sup>11</sup> had failed to accurately identify the real party in interest in its Auction No. 61 applications;<sup>12</sup> and had concealed the fact that licenses held by MCLM's predecessor in interest had

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<sup>4</sup> Maritime Communications/Land Mobile, LLC, *Order*, 21 FCC Rcd 8794 (WTB PSCID 2006) (*First Order*). The *First Order* also denied the Petitioners' Petition to Deny another Auction No. 61 application, that of Paging Systems, Inc. (PSI). We previously addressed the Petitioners' Petition for Reconsideration of the *First Order* with respect to the PSI application. See Paging Systems, Inc., *Order on Reconsideration*, DA 07-1087 (WTB MD rel. Mar. 8, 2007).

<sup>5</sup> AMTS Consortium LLC, Petition for Reconsideration (filed Dec. 27, 2006) (ACL Petition).

<sup>6</sup> Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation Petition for Reconsideration (filed Dec. 27, 2006) (Second Petition). Also before us are a Consolidated Opposition to Petitions for Reconsideration filed by MC/LM on January 8, 2007 (Consolidated Opposition), a Reply to Consolidated Opposition to Petitions for Reconsideration filed by the Petitioners other than ACL on January 29, 2007 (Second Reply) and a Reply to Consolidated Opposition to Petitions for Reconsideration filed by ACL on January 29, 2007 (ACL Reply). (The Petitioners requested and received from the staff a one-week extension of the reply comment filing deadline. See electronic mail dated Jan. 19, 2007, from Scot Stone, Deputy Chief, Mobility Division, to Warren C. Havens.) MC/LM contends that the filing of two separate petitions for reconsideration of the *Second Order* by the Petitioners, one by ACL and one by the other Petitioners, constituted a violation of the page limitations on petitions for reconsideration set forth in Section 1.106(f) of the Commission's Rules, 47 C.F.R. § 1.106(f), since Havens is the real party in interest for all of the Petitioners. See Consolidated Opposition at 2-3. Given the commonality of the arguments and relief requested in those petitions for reconsideration, we do not believe that addressing both the Second Petition and the ACL Petition in the instant *Order on Reconsideration* will prejudice MC/LM. See also ACL Reply at 1-2 (disputing violation of the page limits for petitions for reconsideration); cf. MTS and WATS Market Structure, *Memorandum Opinion and Order*, CC Docket No. 78-72, 97 F.C.C. 2d 682, 708-09 ¶¶ 68-69 (1983) (permitting company and division thereof to file separate petitions, but instructing the company to speak with one voice in future filings).

<sup>7</sup> Maritime Communications/Land Mobile LLC, *Order*, 21 FCC Rcd 13735 (WTB MD 2006) (*Second Order*).

<sup>8</sup> See 47 C.F.R. § 1.2110(c)(5)(iii)(A). Section 1.2110(c)(5)(iii)(A) provides that, for purposes of identifying disclosable interest holders in demonstrating an applicant's eligibility for designated entity benefits, "[b]oth spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States."

<sup>9</sup> See *First Order*, 21 FCC Rcd at 8796-97 ¶ 5.

<sup>10</sup> *Id.* at 8796 ¶ 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 8797-98 ¶ 7

cancelled automatically for non-construction or permanent discontinuance of station operations.<sup>13</sup> The PSCID held that the Petitioners had failed to substantiate any of these allegations,<sup>14</sup> and in some cases had raised arguments that had been rejected previously in other proceedings.<sup>15</sup> Having determined that the Petitioners had not presented a sufficient basis upon which to deny the MC/LM Application or designate it for hearing, the PSCID denied the Petition to Deny.<sup>16</sup>

3. The PSCID did determine in the *First Order*, in response to an argument asserted by the Petitioners, that MC/LM's failure to include in its designated entity showing the gross revenues of Donald R. DePriest, husband of the controlling principal of MC/LM, Sandra M. DePriest, may have contravened Section 1.2110(c)(5)(iii)(A), the spousal affiliation rule.<sup>17</sup> The PSCID concluded that the omission was not grounds to deny the Application, but could be relevant to determining MC/LM's designated entity status, which would be addressed separately.<sup>18</sup>

4. In the *Second Order*, the Division addressed the applicability of the spousal affiliation rule to MC/LM's designated entity showing in the Application. At staff direction, MC/LM had amended the Application on August 21, 2006, by revising the designated entity showing to include the gross revenues of Mr. DePriest.<sup>19</sup> Attribution of Mr. DePriest's gross revenues changed MC/LM's designated entity status from a very small business to a small business, thereby reducing the bidding credit to which MC/LM was entitled from 35% to 25%.<sup>20</sup> MC/LM argued, however, that Mr. DePriest's revenues should not be attributed to MC/LM in determining MC/LM's designated entity status because MC/LM had demonstrated that Mr. and Mrs. DePriest lead "separate economic lives," thus rebutting, in MC/LM's view, the presumption of spousal affiliation set forth in Section 1.2110(c)(5)(iii)(A).<sup>21</sup> In case the Division were to conclude differently, however, MC/LM also requested a waiver of the spousal affiliation rule.<sup>22</sup>

5. The Division determined that the spousal affiliation rule did indeed apply to MC/LM because the presumption of spousal affiliation is not subject to rebuttal, even where, as MC/LM has consistently claimed in this proceeding, the spouse of the controlling principal has no role in financing or controlling the applicant, and otherwise maintains financial and professional independence from the controlling principal.<sup>23</sup> In addition, since Section 1.2110(c)(5)(iii)(A) was intended by the Commission to establish a bright-line rule in lieu of a standard that would require case-by-case review of claims of spousal

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<sup>13</sup> *Id.* at 8798-99 ¶ 8.

<sup>14</sup> *Id.* at 8796-8799 ¶¶ 5-8. The PSCID noted that the Petitioners' Petition to Deny the Application "contain[ed] broad, conclusory assertions of wrongdoing on the part of MC/LM, and then reliev[ed] for substantiation on cross-referenced exhibits that, in fact, do not support those assertions." *Id.* at 8796 ¶ 4. The PSCID provided several examples of the Petitioners' citation to documents included in the voluminous exhibits attached to the Petition to Deny that were not probative of the allegations for which they were offered as proof. *Id.* at 8796-97 ¶ 5 & n.26, 8797 ¶ 6 & n.31, 8797-98 ¶ 7 & n.36.

<sup>15</sup> *Id.* at 8798-99 ¶ 8.

<sup>16</sup> *Id.* at 8801 ¶ 21.

<sup>17</sup> *Id.* at 8798 n.39.

<sup>18</sup> *Id.*

<sup>19</sup> See *Second Order*, 21 FCC Rcd at 13735 ¶ 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 13735-36 ¶ 1.

<sup>22</sup> *Id.* at 13736 ¶ 1.

<sup>23</sup> *Id.* at 13738-39 ¶ 5.

independence, such as MC/LM's, the Division also denied MC/LM's request for a waiver, finding that MC/LM had demonstrated neither unique or unusual circumstances nor that the purpose of the rule would be undermined by its application to MC/LM.<sup>24</sup> Finally, the Division also dismissed a "Request to Place on Public Notice, Request for Leave to Supplement, and Request to Dismiss," filed by Havens, acting individually and as president of the other listed Petitioners, on September 12, 2006 (PN Request), which argued that MC/LM's amendment to the Application revising the designated entity showing to include the gross revenues of Mr. DePriest was a major amendment that should have been placed on public notice.<sup>25</sup> The Division concluded that such action was not required, and that Havens had failed to demonstrate how the reduction of MC/LM's bidding credit harmed Havens.<sup>26</sup> MC/LM's Application was granted on December 29, 2006, along with those of the other winning bidders in Auction No. 61.<sup>27</sup>

6. *Discussion.* Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.<sup>28</sup> A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied.<sup>29</sup> We find that the Petitions do not demonstrate material error or omission in the *First Order* or the *Second Order*, and do not raise any new facts of decisional significance. In addition, we find the new arguments raised by the Petitioners for the first time on reconsideration to be without merit.

7. In the First Petition, the Petitioners reiterate their arguments that MC/LM, in an effort to secure for itself bidding credits to which it was not entitled and to otherwise garner a competitive advantage against other Auction No. 61 bidders, failed to fully disclose all of its affiliates in the Application,<sup>30</sup> failed to identify Mr. DePriest as a real party in interest,<sup>31</sup> and made fraudulent certifications as to its designated entity eligibility,<sup>32</sup> and that the Application therefore should have been denied or dismissed.<sup>33</sup> The Petitioners argue that the PSCID failed to seriously examine relevant evidence presented by the Petitioners in the PTD and exhibits thereto to support these allegations.<sup>34</sup> As the PSCID accurately noted in the *First Order*, however, the PTD made conclusory allegations and cited to various

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<sup>24</sup> *Id.* at 13739-40 ¶¶ 7-8.

<sup>25</sup> *Id.* at 13738 n.25.

<sup>26</sup> *Id.* We understand the Second Petition and the ACL Petition to be seeking reconsideration of the dismissal of the PN Request as well as the *Second Order* generally.

<sup>27</sup> See Wireless Telecommunications Bureau Grants Ten Automated Maritime Telecommunications System Licenses, *Public Notice*, 21 FCC Rcd 15061 (WTB 2006).

<sup>28</sup> See *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>29</sup> *Id.* (stating that "it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"); see also 47 C.F.R. § 1.106(c).

<sup>30</sup> See, e.g., First Petition at 3-4, 7-8, 10-12.

<sup>31</sup> See, e.g., *id.* at 4-5, 7.

<sup>32</sup> See, e.g., *id.* at 4, 12.

<sup>33</sup> See, e.g., *id.* at 4, 17; see also First Reply at 4. The Petitioners also argue that MC/LM, its principals, and its counsel should be sanctioned for violating the Commission's auctions rules. See First Petition at 5.

<sup>34</sup> See, e.g., First Petition at 3-4, 6-7, 9. The Petitioners also argue that MC/LM was not entitled to a waiver of the Commission's Rules. *Id.* at 13. MC/LM's only waiver request in this proceeding was denied. See *Second Order*, 21 FCC Rcd at 13740 ¶ 12.

exhibits for substantiation, but the exhibits did not in fact provide any such substantiation.<sup>35</sup> In sum, the First Petition argues that the PSCID erred in not concluding on the basis of the PTD and exhibits that MC/LM had engaged in misrepresentation, lack of candor and other violations warranting denial or dismissal of the Application. We disagree. We find that the First Petition simply reiterates arguments that were previously considered and rejected, and that there was no material error or omission in the *First Order*.

8. The Petitioners do raise a new legal argument in the First Petition, contending that two court cases, *McKay v. Wahlenmaier (McKay)*<sup>36</sup> and *Superior Oil Company v. Udall (Superior Oil)*,<sup>37</sup> constitute precedent requiring dismissal of the Application as defective.<sup>38</sup> We conclude that *McKay* and *Superior Oil* are inapposite. In *McKay*, the court determined that it was error for the Secretary of the Interior to issue an oil and gas lease to an applicant whose application *was found by the Secretary* to be defective.<sup>39</sup> Despite the Secretary's finding that the application in question was defective, and his acknowledgment that the award of a lease to an unqualified applicant *must be* cancelled under the then-prevailing law, the Secretary had effectively determined that the defect in the winning application had been harmless, and so did not disqualify the applicant. In doing so, the court held, the Secretary had disregarded the Department's own administrative precedent.<sup>40</sup> Similarly, in *Superior Oil*, it was central to the court's

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<sup>35</sup> See *First Order*, 21 FCC Rcd at 8796-98 ¶¶ 5-7. The PSCID offered some examples of how the cited exhibits were not in fact probative of the allegations for which they were relied upon, but did not attempt to exhaustively catalog all of the evidentiary deficiencies in the PTD. *Id.* Given the volume of documents submitted with the PTD, it was not incumbent on the PSCID to specifically address the lack of probative value in each exhibit.

Similarly, Petitioners state that the First Petition provides "additional facts," but do not identify any such additional facts. See First Petition at 6. We note, however, that new facts were raised both in the First Opposition and in the ACL Petition. In the First Opposition, MC/LM individually addresses more than sixty entities that the Petitioners allege or suggest are under the control of Mr. or Mrs. DePriest, and affirmatively denies any connection with respect to the great majority of those entities. See First Opposition at 5-10. MC/LM concedes, however, that it should have included in its designated entity showing the gross revenues of three additional entities: Charisma Broadcasting Co., Bravo Communications, Inc., and Golden Triangle Radio, Inc. *Id.* at 11. MC/LM says its "regrets its oversight of these revenues and trusts that the Commission will recognize that they are immaterial to any issue in the instant matter." *Id.* Although it appears that MC/LM is correct that attribution of the relatively small gross revenues of the three identified entities, if reported accurately in the First Opposition, do not affect MC/LM's designated entity status, the omission does constitute a violation of the Commission's Rules. See 47 C.F.R. § 1.2110(b). We further note that, as pointed out by ACL, see ACL Petition at 19, MC/LM has in recent pleadings represented that Mr. DePriest is an officer and director of MC/LM, see, e.g., Maritime Communications/Land Mobile, Inc., Opposition to Petition to Deny Application FCC File No. 0002755676 (filed Oct. 23, 2006) at 3, which conflicts with MC/LM's statement in its amended designated entity showing, filed two months earlier, that Mr. DePriest "is neither an officer nor a director of MC/LM." See Application, Attachment at 1. MC/LM has offered no explanation for the inconsistent statements regarding Mr. DePriest's status. While we conclude that these omissions and inconsistencies do not, individually or in the aggregate, constitute grounds to deny the Application, we nonetheless are concerned by MC/LM's failure to provide accurate information on the first attempt. We note that our actions herein are without prejudice to further inquiry and action by the Commission's Enforcement Bureau.

<sup>36</sup> *McKay v. Wahlenmaier*, 226 F.2d 35 (D.C. Cir. 1955) (*McKay*).

<sup>37</sup> *Superior Oil Company v. Udall*, 409 F.2d 1115 (D.C. Cir. 1969) (*Superior Oil*).

<sup>38</sup> See First Petition at 13-16.

<sup>39</sup> See *McKay*, 226 F.2d at 40. The Secretary determined that the application was defective because it was filed by an individual who failed to list in his application his interests as a shareholder in a corporation applying for the same lease, circumventing a policy that only one application could be filed per applicant in any particular drawing. See also *id.* at 42 (noting that "[t]he Secretary had expressly found that [the winning applicant] had obtained the lease in contravention of the regulation which required him to disclose his interests in corporate leases ...").

<sup>40</sup> *Id.* at 40.

holding that an “authorized officer” of the Department had determined that the subject application was “unacceptable” because it was unsigned.<sup>41</sup> Indeed, *the Secretary himself acknowledged* in that case that the absence of a signature was a substantive “deficiency in [the subject applicant’s] bid [that] cannot be waived.”<sup>42</sup> In both *McKay* and *Superior Oil*, therefore, the lease was awarded to an applicant notwithstanding an administrative finding that the application was defective. In the *First Order*, in contrast, the PSCID did not find the Application to be defective, incurably or otherwise, notwithstanding the Petitioners’ repeated protestations that it should have done so. Indeed, in *Biltmore Forest Broadcasting FM, Inc. v. FCC (Biltmore Forest)*,<sup>43</sup> the Court specifically distinguished the case before it from *McKay* and *Superior Oil* because in the case before it there had been no Commission determination that an omission in an application rendered the application incurably defective, only an argument to that effect by a competing auction participant.<sup>44</sup> The same factor distinguishes the instant case from *McKay* and *Superior Oil*. We therefore deny the First Petition and affirm the *First Order*.

9. Turning to the *Second Order*,<sup>45</sup> we emphasize at the outset that the only issues presented by that decision are the applicability of the spousal attribution rule to the Application and the categorization of MC/LM’s amendment revising its designated entity showing as a minor amendment. The Petitioners’ allegations implicating MC/LM’s basic qualifications, such as the allegations of real-party-in-interest violations, undisclosed interest holders, misrepresentation, and lack of candor, were raised by the Petitioners in the PTD and in the First Petition, and have been fully considered in the *First Order* and *supra*, on reconsideration of the *First Order*. Any further discussion of these matters in the Second Petition<sup>46</sup> and the ACL Petition<sup>47</sup> is repetitive and beyond the scope of the *Second Order*, and we will not address them further.

10. The amendment filed by MC/LM was properly characterized as a minor amendment in the *Second Order*, and thus did not need to be placed on public notice.<sup>48</sup> Contrary to the Petitioners’

<sup>41</sup> See *Superior Oil*, 409 F.2d at 1118-19.

<sup>42</sup> *Id.* at 1119.

<sup>43</sup> *Biltmore Forest Broadcasting FM, Inc. v. FCC*, 321 F.3d 155 (D.C. Cir. 2003) (*Biltmore Forest*).

<sup>44</sup> *Id.* at 161.

<sup>45</sup> The Petitioners also argue in the First Petition, which was filed before the Division released the *Second Order*, that the decision by the PSCID in the *First Order* to address the application of the spousal affiliation rule, and how that affected MC/LM’s eligibility for bidding credits, separately deprived the Petitioners of their right to participate in the proceeding. See First Petition at 4, 10; see also Second Petition at 4; ACL Petition at 8. We conclude that the subsequent release of the *Second Order*, and our present consideration of the Second Petition and the ACL Petition, moot this concern. Cf. *S&L Teen Hospital Shuttle, Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶ 5 (2001). Moreover, we believe that it was fully within the PSCID’s discretion to consider MC/LM’s designated entity status in a separate order. It is well established that the Commission has wide discretion to conduct its proceedings “in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” See 47 C.F.R. § 154(j); *GTE Service Corp. v. FCC*, 782 F.2d 263, 273 (D.C. Cir. 1985); see also *Mobex Network Services, LLC, Order on Reconsideration*, 22 FCC Rcd 665, 669 ¶ 15 (WTB MD 2007) (*Mobex*) (“[Havens] cites no authority, and we are aware of none, constraining the Division’s discretion with respect to the sequence in which pending matters are addressed.”) (citing *Geostar Corporation, Memorandum Opinion and Order*, 2 FCC Rcd 5875, 5875 4 (CCB 1987)), *recon. and review pending*.

<sup>46</sup> See, e.g., Second Petition at 6, 10, 21, 24-25; see also Second Reply at 6-8, 10.

<sup>47</sup> See, e.g., ACL Petition at 6-7, 15-24; see also ACL Reply at 3-6.

<sup>48</sup> See 47 C.F.R. § 1.933(b) (providing for additional public notice of applications subject to a major amendment, but not providing for such public notice for applications subject to a minor amendment); see also 47 C.F.R. §§ 1.939(e) (discussing petitions to deny amended applications, but making mention only of applications subject to a major amendment), 1.2105(b)(2) (recognizing the dichotomous treatment of major and minor amendments with respect to auction applications).

contentions, the characterization of an amendment as major or minor depends neither on whether it is the subject of “a major Order” nor on an individualized assessment of whether and how the amendment may affect the interests of third parties. Rather, a minor amendment is any amendment that is not of a type specifically listed as a major amendment in Section 1.929 of the Commission’s Rules.<sup>49</sup> An amendment that revises an applicant’s designated entity showing by adding revenues attributable to the applicant by operation of the spousal attribution rule is not among the amendments listed as major in Section 1.929, and therefore is properly characterized as a minor amendment. Nothing in Section 1.2105 alters this conclusion, as that rule, like Section 1.929, includes changes in ownership as major amendments,<sup>50</sup> but no such change of ownership (or in MC/LM’s size) has been found to occur here, notwithstanding the Petitioners’ arguments.<sup>51</sup> In the absence of a change of ownership, an amendment reducing an applicant’s bidding credit eligibility is minor. Indeed, we believe *Biltmore Forest* to be precisely on point on this issue.<sup>52</sup>

11. Finally, we continue to believe that the action taken in the *Second Order* did not harm the Petitioners at all.<sup>53</sup> The only substantive decision in the *Second Order* was that MC/LM was entitled to a smaller bidding credit than it sought. Applicants to participate in the Commission’s spectrum auctions do so with the knowledge that they are bidding against entities whose short-form applications have been subject to only an initial screening process rather than an in-depth review of the applicants’ qualifications and eligibility for bidding credits.<sup>54</sup> Such was the case in Auction No. 61. The Commission adopted a two-phased auction application process which contemplates that potential licensees file streamlined, short-form applications in which applicants certify under penalty of perjury as to their qualifications and eligibility for a bidding credit.<sup>55</sup> The Petitioners submitted their bids with the understanding that they would be subject to all of the rules and procedures that govern the auction, including the two-phased approach to application review. The Commission’s auction procedures and rules envision exactly the sort of post-auction review that occurred with regard to the MC/LM application for licenses it won in Auction No. 61.<sup>56</sup> While our application process envisions a post-auction reduction in an applicant’s bidding if long-form review indicates the applicant is ineligible for the bidding credit sought, it does not envision that the post-auction review will undo the auction.<sup>57</sup>

12. *Conclusion and Ordering Clauses.* The Petitioners have not identified any error in the

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<sup>49</sup> See 47 C.F.R. § 1.929(k).

<sup>50</sup> See 47 C.F.R. §§ 1.2105, 1.929(a)(2)

<sup>51</sup> See Second Petition at 6-7. As explained in the *Second Order*, the Division did not find that there had been any change in the size or control of MC/LM during the pendency of its Auction No. 61 applications, but only that Mr. DePriest’s revenues must be attributed to MC/LM automatically by operation of the spousal attribution rule, irrespective of his role in MC/LM. See *Second Order*, 21 FCC Rcd at 13738 n.25. While the Petitioners have argued that there has been a change in control and size of MC/LM, the PSCID and the Division have not so concluded. That the Petitioners disagree with those determinations does not change the nature of the amendment.

<sup>52</sup> See *Biltmore Forest*, 321 F.3d at 160-63.

<sup>53</sup> See *Second Order*, 21 FCC Rcd at 13878 n.25.

<sup>54</sup> See *Winstar Broadcasting Corp., Order on Reconsideration*, 20 FCC Rcd 2043, 2050-53 ¶¶ 15-19 (2005) (*Winstar Broadcasting*).

<sup>55</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2376 ¶ 162-63 (1994) (“Submission of a short-form application prior to the auction, ... would reduce the administrative burdens of the initial stages of the auction process, avoid unnecessary delay in the initiation of service, and encourage applicants to participate in the process.”).

<sup>56</sup> See 47 C.F.R. § 1.2108.

<sup>57</sup> See *Winstar Broadcasting* 20 FCC Rcd at 2052-53 ¶¶ 15-19.

*First Order* or the *Second Order*, and have not otherwise provided any basis for finding that the PSCID should not have denied the Petitioners' Petition to Deny MC/LM's Auction No. 61 long-form application, or that the Division should not have permitted MC/LM to amend the application to revise its designated entity showing in a manner that resulted in a reduction in the bidding credit to which it was entitled, or that the Division should have treated the amendment as a major amendment and placed it on public notice. We find, rather, that both the *First Order* and the *Second Order* were reasonable, consistent with the record evidence, and in accordance with applicable law, including controlling judicial precedent. We therefore deny the Petitions.<sup>58</sup>

13. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC on September 6, 2006, IS DENIED.

14. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus-VPC, LLC, Telesaurus Holdings GB LLC, and Skybridge Spectrum Foundation on December 27, 2006, IS DENIED.

15. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by AMTS Consortium LLC on December 27, 2006, IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the request for leave to supplement petition for reconsideration filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless LLC, AMTS Consortium LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC on October 2, 2006, IS GRANTED IN PART to the extent set forth herein and OTHERWISE DENIED.

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<sup>58</sup> In addition, we find no basis to recuse any FCC staff from this proceeding, as requested by the Petitioners. *See* Second Petition at 25; *see also id.* at 5; First Reply at 9. "The test for recusal in an adjudicatory proceeding on the ground of bias or the appearance of bias is whether 'a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law of a case in advance of hearing it.'" *Liberty Productions, Order*, 16 FCC Rcd 18966, 18973 ¶ 6 (2001) (quoting *Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154, 1164-65 (D.C. Cir. 1998)). Petitioners have made no such showing. Past adverse decisions against a party are not evidence of bias. *See, e.g., Barnes Enterprises, Memorandum Opinion and Order*, 66 F.C.C. 2d 499, 501-02 ¶ 6 (1977); *see also Mobex*, 22 FCC Rcd at 669 ¶ 15.

We also note that the Petitioners have repeatedly suggested in their pleadings, but have provided no evidence, that the *First Order* and *Second Order* were the product of a corrupt process. *See, e.g.,* First Petition at 13 n.8 (insinuating that MC/LM exercised "undue influence" over the Commission by virtue of the DePriests' political and religious affiliations); First Reply at 7 (stating that the Division's determination that MC/LM's amendment was a minor amendment reflects "some hidden private agenda"); Second Petition at 18 n.24 (contending that MC/LM's waiver request "clearly signals that MCLM ... had a deal worked out with the FCC to grant the Amendment" and that the "waiver request and its 'denial' thus appear to be a pre-arranged charade ..."). We reject these conclusory, unsupported claims. *See, e.g., Jose M. Oti, Order*, 7 FCC Rcd 6885, 6885 ¶ 3 (1992). We note, in this regard, that the Division recently had occasion to expressly warn the Petitioners regarding the filing of frivolous and abusive pleadings. *See Mobex*, 22 FCC Rcd at 671 ¶ 16. The instant Petitions were filed prior to that warning.



17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. § 0.131, 0.31.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau